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April 16, 2020

**VIA ECF**

Honorable Margo K. Brodie  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*, No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address several of the important issues raised in this litigation through mediation.

**I. Background**

Since our April 10, 2020 Telephone Status Conference with the Court, I have spoken with counsel for Federal Defenders, Inc., along with their client representatives and have had a similar separate conversation with counsel for the

government and representatives of the Metropolitan Detention Center (“MDC”) and Metropolitan Correctional Center (“MCC”).<sup>1</sup>

This week, my conversations with the Federal Defenders and the Government have focused on the following topics:

1. Protocols for collecting data on attorney requests for legal video and teleconferences.
2. Protocols for ensuring inmates receive telephone calls if and when they are placed on isolation units due to coronavirus exposure.
3. Privilege concerns relating to legal telephone calls at both facilities.
4. Technical, logistical, and security limitations on existing video and telephonic equipment at MCC and MDC, especially as they relate to the ongoing COVID-19 pandemic.

Once again, my discussions with the parties have been productive. Each side understands the important issues at stake in this litigation and are working in good faith and under difficult circumstances to address these issues.

## **II. Telephonic Contact**

We have received data on legal telephone calls from both institutions.

The quality of the data we received from MDC has improved since our last update to the Court. Between April 10, 2019 and April 15, 2020, MDC recorded forty-seven new requests for legal telephone calls. The vast majority of these calls have been completed within two business days. We did observe that the Federal Defenders’ data reflected two requests made during this time period that MDC could not locate within its email system and thus did not provide to the Unit Managers. These are the only two call requests submitted during this recent time period for which no action was noted. Additionally, for the same time period, MDC began to address its backlog of requests for telephone calls. The Facility recorded that it completed forty-nine outstanding requests for calls that had been received between March 20, 2020 and April 9, 2020. Both parties acknowledge the progress MDC has made on this issue. I also note that in the past week, MDC received additional staff from another facility. My understanding is that the Institution has used this staff to facilitate legal calls for inmates.

We are still reviewing the data we received from MCC this week. While we do see some volume of telephone activity, we are unable to determine to what degree, if any, MCC is improving. We will continue to work with MCC to ensure its data is

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<sup>1</sup> With Federal Defenders, Inc.: April 16, 2020; with MCC and MDC: April 14, 2020.

accurate and timely updated. I have also requested a telephone conference with the Warden of MCC to discuss these issues.

Finally, in our conversations, the Federal Defenders again raised a concern about whether BOP staff are respecting the confidentiality of privileged legal calls. This issue was raised at last week's Status Conference, and in the Government's April 14, 2020 letter to the Court. *See* ECF No. 52 at p. 2. While the Federal Defenders note improvements by staff at MDC, they remain concerned about MCC staff conduct when facilitating legal calls in unit offices. One instance in particular was brought to my attention by Federal Defenders. I have raised this issue with the MCC and will be making further inquiries.

### **III. Video Conferencing**

MDC reports that for the period between April 10, 2020 and April 15, 2020, it received nine new requests for videoconferences. 67% of these were completed, 11% of these were scheduled as of April 15, and 22% of these requests were not completed because the inmate was quarantined.

Notwithstanding the progress MDC has made on telephone calls, the Federal Defenders have raised the issue of open video call requests. We have identified one instance where an attorney requested and obtained a video call and then requested a subsequent video call that has not been scheduled. It is our understanding that the inmate is in a quarantined unit and the institution is working to schedule a telephone call. In a second instance the initial request for videoconference was converted into a request for a telephone call, which the institution is working to schedule. As previously noted, when extenuating circumstances require the cancellation of scheduled videoconferences and MDC has at least forty-eight hours' notice and other requests on file, MDC has committed to working to fill the newly vacant videoconference slots with other previously submitted requests.

The videoconferencing system continues to experience intermittent technical issues. Last week, IT personnel at the EDNY courthouse were provided the direct cell phone number of the MDC's Computer Services Manager in the event of technical issues. Unfortunately, that individual is now on medical leave. Another Computer Services staff member has been designated the VTC point of contact in his absence, and the EDNY courthouse has been provided a means of direct access to him.

Finally, I have spoken with the Eastern District of New York Clerk of Court Doug Palmer, who has advised me that the Court and the BOP are scheduled to begin court proceedings the week of April 20 pursuant to the protocol set forth between the Eastern and Southern Districts of New York. Mr. Palmer further advised me that attorneys should be able to schedule client calls during the afternoon hours as set forth in the protocol and the system will allow for remote attorney access. In addition, the current videoconference system will remain operational for defense counsel use. BOP has confirmed that the current system will still be available for use.

**IV. Inmates in Isolation**

The Federal Defenders have argued that BOP has a policy of not providing legal calls to inmates who are isolated due to coronavirus exposure. The BOP has responded to this allegation saying that it “has never been a policy that inmates in isolation cannot be provided with legal telephone calls.” ECF No. 52 at p. 2. Indeed, there does not appear to be such an official policy. I am informed, however, that in at least one opposition to a request for a court order for a call, the Government relied upon an inmate being in isolation as a reason for why a call could not be arranged. In addition, MDC records reflect that they received multiple requests since March 25, 2020 for a telephone call for another inmate on isolation. Records indicate that the call was completed on April 15, 2020.

This week, I was informed by MDC staff that there is currently only one inmate on isolation for which a request for a legal call was recently made. That call was scheduled to go forward on April 17, 2020. I have received assurances from both the MCC and MDC that inmates in isolation will be provided legal calls. I will, however, continue to closely monitor this issue. To this end, I have requested ongoing data from both facilities about how many isolated inmates have received or requested legal calls.

Respectfully,

/s/ Loretta E. Lynch  
Loretta E. Lynch

cc: Sean Hecker, Kaplan, Hecker & Fink  
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